IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

MACA.No. 647 of 2004()

OPMV.881/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APELLANT/PETITIONER.

VELAPPAN NAIR, S/O.THANKAPPAN NAIR,
GIRIJA VILASOM HOUSE, AYIRAKKARA, KARODU VILLAGE,
NEYYATTINKARA TALUK, NOW RESIDING AT
QUARTERS, NO.E.52-B, KSEB COLONY,
MOOLAMATTAM P.O. MOOLAMATTOM.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: RESPONDENTS.

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1. N.B.SHAJI, S/O.BALAKRISHNAN,
   RESIDING AT QUARTERS NO.E.14B, KSEB COLONY,
   MOOLAMATTOM P.O. MOOLAMATTOM.

2. THE NATIONAL INSURANCE COMPANY LTD.,
   THODUPUZHA.

BY GOVT. PLEADER SRI.L.G.SURESH BABU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

M.A.C.A. No. 647 of 2004

Dated this the 9th day of January, 2007

JUDGMENT

The appellant filed O.P.(MV) No.881 of 2000 before the Motor Accident Claims Tribunal, Thodupuzha, claiming compensation on account of the injuries sustained by him in an accident which took place on 15.11.1999. The appellant was a pillion rider on a motor bike bearing registration No. KL6A 3185. The first respondent is the owner-cum-rider of the motor bike. The appellant contended that the motor bike "slipped down on the road" and he sustained injuries. It was contended that the accident took place due to the rash and negligent driving by the first respondent. The second respondent is the insurer in respect of the motor bike. The second respondent insurer raised a contention that no accident as alleged in the petition took place. It was also contended that the policy was an Act Only Policy. The pillion rider is not covered by the policy.

2. Before the Tribunal, the appellant herein was examined as PW1 and Exts. A1 to A9 were marked on his side.

The Tribunal considered the evidence of PW1 and held that the appellant has not disclosed true facts before the Tribunal. It was noticed that there is difference between the case put forward in the claim petition and that put forward in the evidence. It was stated in the evidence that an autorikshaw was also involved in the accident and the first respondent applied the break on seeing the autorikshaw and thereby the accident occurred. Such a case was not put forward in the claim petition. FI statement was recorded by the police after three days of the accident. It has also come out in evidence that the appellant and the first respondent are colleagues. On considering the pleadings and evidence, the Tribunal came to the conclusion that the litigation is a collusive one between the appellant and the first respondent.

3. Ext. B1 policy is an Act Only Policy. It is now settled by the decision of the Supreme Court in **2006(4) SCC 404 = 2006(2) KLT 884 (SC) United India Insurance Company Ltd. v. Thilak Singh and others** that a pillion rider of a scooter is a gratuitous passenger and there is no liability for the insurance company to pay compensation in respect of death or

bodily injury of the gratuitous passenger, if the policy is a statutory policy. Therefore, the second respondent insurance company cannot be made liable at all. As regards the liability of the first respondent, the Tribunal found that the appellant failed to prove that the first respondent was negligent in driving the vehicle. Going by the case but forward by the appellant in evidence, it cannot be found that the accident occurred due to the rash and negligent driving by the first respondent. The Tribunal was justified in dismissing the claim petition. No grounds are made out for interference.

M.A.C.A. is dismissed.

K.T.SANKARAN,
JUDGE

csl